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The American tradition of civil liberty has its roots in those Anglo-Saxon institutions that carry back to the earliest days of English History. The more distinctive American development begins with the war of the revolution, when a new nation was having its birth in the storm and stress of the first American civil war. Interestingly enough, the first state constitutions which bear the dates of this revolutionary era led off in sweeping declarations in favor of individual liberty—freedom of speech and press, freedom of petition and assemblage, freedom of religious worship, and the rest. George Mason, the father of the Virginia bill of rights, could rejoice in the general tendency to emulate the example set by the Old Dominion. It did not seem inconsistent with these guarantees, perhaps, that the "Tories," traitors to the American cause, and even suspects, who would not take their stand with the patriot party, should become the victims of persecution, at first by irresponsible mobs and later by revolutionary committees and governments until at length the liberty of the individual was hedged on every side. However much practice may have failed to square with principle, the formal promulgation of these bills of rights marks an era in the development of the American concept of civil liberty.

When a new fundamental law was under discussion in 1787 and 1788, one of the outstanding issues was the question of adequate safeguards for the rights of the individual. No one challenged those rights; the only question was whether or not specific guarantees against possible encroachment by the central government should be incorporated in the new constitution. In due time the insistent defenders of human rights forced the addition to the federal constitution of the first ten amendments to constitute such a national bill of rights.

No real strain upon these principles came until war clouds gathered in 1798, when *de facto* hostilities were actually waged by French and American vessels upon the high seas. Then the conservative forces in power became fearful of democracy, which they regarded (in the language of George Cabot) "in its natural operation . . . the government of the worst;" they felt that the opposition forces should be effectively checked. They pointed to the alien agitator in the country, to the "red" propaganda, and to the necessity of curbing the spread of the democratic ideal.

In that day it was the Frenchman, the defender of the French revolution, of the contemporary brand of "Bolshevism," which was designated as "Jacobinism"—for the French revolution had passed into the hands of the radical party, the Jacobins. Jacobinism" must be checked; so an alien act was passed authorizing the president to order the withdrawal of any undesirable alien. But the president who signed the act did not have the courage in the face of public resentment, to order the deportation of a single alien. At any event, it seemed that radical thought and speech must be checked—for there were many points of contact between American democrats and the radical alien agitators; hence a sedition act which provided a heavy penalty for any criticism of the government or of its agents. The administration allowed this act to be used against a few aggressive opponents; thereupon a popular revulsion took place at the ballot-box and swept the conservatives from power. As to the small group of offenders who were still under the penalties of the law, Jefferson decreed their release as one of his first official acts as president.¹ He had already proclaimed in the famous passage of his inaugural address the right of opponents to criticize and attack his own administration: "if there be any among us," he declared, "who would wish to dissolve this Union or change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it."²

Thus in the early days of the fathers was established the tradition which has been a national heritage for later generations, a tradition which furnishes the background for Lincoln's attitude toward civil liberty when he piloted the nation through civil war. As he well knew, this tradition had twice withstood the test of actual war-time conditions.

During the war of 1812, the very men who had enacted the sedition law of 1798 claimed for themselves the right freely to criticize the government and to oppose the war. They found an eloquent spokesman in the rising young Webster, who took a moderate and dignified position, as compared with the many who were ready even "to go as far in active opposition to the war as was possible without incurring the risk of an indictment for treason." Webster was delegated to draw up the famous Rockingham memorial in which it was solemnly declared: "If we could perceive that the present war was just; if we could perceive that our rights and liberties required it; if we could perceive that no Administration, however wise, honest, or impartial, could have carried us clear of it; if we could perceive its expediency, and a reasonable hope of obtaining its professed objects; if we could perceive those things, the war would, in some measure, cease to be horrible. It would grow tolerable, in idea, as its expediency should be made manifest. Its iron and bloody features would soften, as its justice grew apparent. . . . But

we are constrained to say, that we cannot, in conscience, ascribe the foregoing characteristics, to the present war. . . . We are wholly mistaken, if the causes assigned for the present war against England will bear the test of these principles."³ No restraint was imposed upon so frank and outspoken a criticism. In recognition of his capable anti-war leadership, the Rockingham convention honored Webster with the nomination to a seat in Congress and in the following election he led his party to victory.

In 1846 the nation was again at arms at the call of a president who made the soul-stirring appeal that a ruthless neighbor had caused the shedding of American blood upon American soil. Abraham Lincoln was then on the threshold of a career in national politics—the Whig candidate for Congress in the Springfield district. There is no evidence that during this canvass he proclaimed himself the champion of peace against the forces of Mars. Some time later, however, he joined in the Whig challenge to the war policy of the administration. Then did he set few bounds upon his defiance of the President. Then Abraham Lincoln and a hundred others assumed the role that had been essayed by Webster. He boldly summed up the situation in a speech delivered Congress on July 27, 1848: "If to say 'the war was unnecessarily and unconstitutionally commenced by the President' be opposing the war, then the Whigs have very generally opposed it. Whenever they have spoken at all, they have said this; and they have said it on what has appeared good reason to them. The marching of an army into the midst of a peaceful Mexican settlement, frightening the inhabitants away, leaving their crops and other property to destruction, to you may appear a perfectly amiable, peaceful, unprovoking procedure; but it does not appear so to us. So to call such an act, to us appears no other than a naked, impudent absurdity, and we speak of it accordingly."⁴ All this and more Lincoln said, knowing that he was risking nothing more than the support of a constituency responsive to the lure of a successful war.

Meantime in Lincoln's home town of Springfield, the Rev. Albert Hale in a public sermon proclaimed the injustice of the national cause and characterized the returning volunteers, whom the community was welcoming as heroes, by some such designation as "moral pests to society."⁵ The state constitutional convention was then in session in Springfield and Mr. Hale was one of the clergymen who had offered opening prayers. One of the members of the convention now denounced Hale's sermon, and proposed that the clergyman "be excused from holding prayers in this Convention for the future." The convention, however, by an overwhelming vote adopted a motion to lay the resolution on the table. A long debate followed: the resolution was renewed, but John M. Palmer, a pro-war leader who later became governor of Illinois, moved a substitute declaring the principles of the free-

dom of worship and freedom of speech and disclaiming "all censorship over the pulpit, or the opinions expressed therefrom, inasmuch as such censorship is in violation of the rights of the Reverend gentleman."⁶ The resolution virtually sustaining Mr. Hale was barely tabled (60-54), but the general declaration in favor of the principles involved was upheld (9-102). The convention then adjourned in order to proceed to Jacksonville to participate in the ceremonies attendant upon the funeral of Colonel Hardin, the Illinois war hero, in whose memory the delegates were, according to unanimous agreement, wearing crepe upon their left arms for a period of thirty days.⁷

The *Chicago Tribune* of that day upheld the clergyman war heretic and deplored the attempt to censure him. *The Western Citizen* of Chicago even applauded the Rev. Mr. Hale for having declared the war's "corrupting and demoralizing influence upon the volunteers." "We rejoice," it declared, "that in that region where the war spirit so generally prevails, there is one man of sufficient moral courage to tell the truth on this subject. It is truly a moral oasis in the desert."⁸ When one of the anti-war papers implied that the original resolution involved an attempt to interfere with freedom of opinion or of utterance, the *Illinois State Register*, the state organ of the pro-war party, denied this interpretation and explained: "The mover of the resolution of expulsion did not care what Mr. Hale did in his own pulpit; he simply wished that the Convention should not be the theatre of his 'religious performances'."⁹

It was obvious that the Mexican War did not disturb American tradition to the point of interfering with the civil liberties of persons who insisted upon proclaiming their disagreement with the war policies of the government. To be sure, it produced the famous anti-war anecdote later repeated by Lincoln when he could look back upon his anti-Mexican war stand as having contributed to his enforced retirement from active political life. This story originated in or near the editorial office of the *Illinois Journal* under auspices not far removed from Lincoln himself. A witty friend of the editor, asked if he was in favor of the war, replied: "Yes—I am in favor of the war. I went against war once to my great cost, and you will never catch me in another scrape of that kind. This time . . . I go in for *war, pestilence and famine*."¹⁰ The pro-war party deplored such wit and the questionable patriotism that it implied, but had to concede the right of the opposition to a full and untrammelled statement of its position. The Whig critics of the war resented any tendency to question their right to designate the war as unnecessary and unconstitutional, the work of a weak President and an incompetent cabinet.¹¹

Fifteen years later, Abraham Lincoln, the war heretic of 1847, was in the presidential chair. In the background lay this well-tested tradition of freedom of opinion, of speech, and of

press; immediately before him lay the responsibilities of office at a time when the very existence of the nation was threatened. He faced problems such as not only try men's souls, but also such as strain to the utmost the safeguards of civil liberty. Let Lincoln himself explain the complexity of the situation: "Every department of the government was paralyzed by treason. . . . Even in the portions of the country which were most loyal, political combinations and secret societies were formed, furthering the work of disunion, while, from motives of disloyalty or cupidity, or from excited passions or perverted sympathies, individuals were found furnishing men, money, and materials of war and supplies to the insurgents' military and naval forces. Armies, ships, fortifications, navy-yards, arsenals, military posts, and garrisons one after another were betrayed or abandoned to the insurgents."¹² In this emergency, the president "caused persons who were represented to him as being or about to engage in disloyal and treasonable practices to be arrested by special civil as well as military agencies and detained in military custody when necessary to prevent them and deter others from such practices."¹³

This was Lincoln's explanation made through his secretary of war on February 14, 1862, in an order in which he accepted responsibility for arbitrary arrests that in reality probably represented the wishes of his secretaries of state and war. In this same way he later acquiesced in the arrest and trial by court martial of the noted Ohio Copperhead leader, Clement L. Vallandigham, although he clearly acted against his better judgment. He even rationalized his official course, and publicly upheld the right to make military arrests "in localities where rebellion or insurrection does not actually exist"; he went further and asserted the right to interfere with the agitator who proclaimed that the Union armies were fighting in a bad cause and for a wicked administration.¹⁴ Officially Lincoln accepted responsibility for a policy which his friend, Senator Trumbull of Illinois, openly condemned, and which General John M. Palmer, writing from the field, forecasted would convert "this Constitutional Republic into a despotism." But probably none of these official commitments so well indicates his real policy as the remainder of this executive order of February 14, 1862, in which he directed that "all political prisoners or state prisoners now held in military custody be released on their subscribing to a parole engaging them to render no aid or comfort to the enemies in hostility to the United States." Few of these "political prisoners" were mere war critics; they were mainly those who had aimed to come to the assistance of the southern confederacy or who had played the part of active and dangerous obstructionists. Lincoln knew, when he issued this "EXECUTIVE ORDER NO. 1, RELATING TO POLITICAL PRISONERS," that there was no unanimity in the attitude of northerners toward his war aims;

yet, feeling that the line between loyalty and disloyalty had become "plainly defined," he was unwilling to interfere further with the civil liberties of those who would promise to render no aid or comfort to the enemy.

Lincoln was anxious to make every possible distinction between the political prisoner and the ordinary criminal. He was ready to free the war offender as soon as he became convinced that he could adjust himself to a constructive contribution to his home community. It was in this spirit that Lincoln on December 8, 1863, when the cause of the Union was still dark and uncertain, issued his famous Amnesty Proclamation, in which he offered a full and complete pardon "to all persons who have, directly or by implication, participated in the existing rebellion," excepting only the civil and military leaders of the Southern Confederacy, upon condition that they would take an oath to support the constitution and laws of the United States.¹⁵ This offer was made to active traitors in the meaning of the Constitution; the policy outlined in this Amnesty Proclamation was executed by Lincoln and by his successor, Johnson, as the best way of obliterating the scars of the national division of 1861.

Criticism of Lincoln and of the administration arose in every part of the loyal North. Often it was in most aggravating forms. Lincoln was called a "widow-maker" and "a tyrant only fit to split rails."

"There is so much sameness in the history of all tyrants that a line of demarcation can hardly be drawn between them. Compare Nero to Abraham Lincoln, and you will see a wonderful similarity. Nero fiddled while Rome was burning; Abraham Lincoln told a nonsensical joke while the field of Antietam was still smoking with the hot blood of the patriots who had fallen there. . . . Great Heavens! How much more iniquity will the freemen of America stand from the usurper and tyrant who is only fit to split rails." (*Cairo Democrat*, July 14, 1864.)

"This accursed war has lasted over three years, and never, since its commencement, has our cause seemed so gloomy as now. . . . If Abraham Lincoln be re-elected President of the United States, ere his term of office shall expire we shall be wiped from the list of great nations, and the name of America will be considered with reproach and scorn by the old nations of the world." (*Joliet Signal*, August 9, 1864.)

"We all shall all breathe more free, now that the graceless set of fanatics, demagogues, toadies, and minions of executive power, that formed our American Rump Parliament, have dispersed and gone to their homes. We pray heaven that the political rascallions, the Praise-God-Barebones, and Fight-the-Good-Fight of Faith Fellows, who submissively sat in their seats and obeyed the behests of their Sovereign Lord, Abraham Lincoln, may never return to the halls they have disgraced." (*Belle-ville Democrat*, July 9, 1864.)

These are but few of the items of criticism made by opposition papers in Lincoln's own state. Few of the most active journalistic critics suffered from any interference whatever, whether direct or indirect. There were certain journals, however, which found it difficult to exercise free expression in war-

time. A number of newspapers suffered from the raids of loyalist mobs, and a few were temporarily suppressed by military commanders. A considerable outcry arose from the opposition. It was therefore charged to the account of Lincoln that no proclamation was issued by him as President against such violations of constitutional and civil rights.

In general, however, there is no evidence that Lincoln countenanced such action in even the most indirect way. A technical responsibility he may have had,—but one which he would gladly have shelved. His home newspaper, *The Illinois State Journal*, early in the war proclaimed a doctrine that he seems to have thoroughly shared: "Public men are, to a certain extent, public property, and the Press are free to praise or censure their actions. We would never see this right abridged."¹⁶

The *Chicago Times* and the *Jonesboro Gazette* were two of the most serious thorns in the side of the Illinois war party of 1861. For six weeks in the spring of 1863, the office of the *Jonesboro Gazette* was closed by the local military commander pending his work of arresting deserters in that vicinity; and the paper was later laid under interdict by General Burnside. As early as August 7, 1862, Governor Yates wrote to Secretary of War Stanton, "There is an urgent and almost unanimous demand from the loyal citizens that the *Chicago Times* should be immediately suppressed for giving aid and comfort to the enemy."¹⁷ Its circulation was temporarily forbidden by certain generals in their commands. Early in 1863 the Chicago Board of Trade and the Chicago Y. M. C. A. started a boycott of the *Times* and the Chicago and Galena Railroad prohibited its sale on the company's trains.

On June 1, without waiting to confer with the War Department, General Burnside, in command of the Department of the Ohio, issued general orders, Number 84, which proclaimed the suppression of the *New York World* and of the *Chicago Times*, "on account of the repeated expression of disloyal and incendiary statements." Before daybreak on June 3, a military detachment from Camp Douglas took possession of the *Times* printing establishment. Within a few hours a meeting of prominent citizens of both political parties presided over by the Mayor unanimously agreed to request the President by telegraph to rescind General Burnside's order,—a request which was reenforced by the personal solicitation of Senator Trumbull and Representative Arnold of the Chicago district. The lower house of the State Legislature simultaneously passed a resolution condemning the Burnside order. In Chicago that evening a mass meeting of twenty thousand representative voters gathered, and enthusiastically resolved that the freedom of speech and of the press should be upheld by the subordination of the military power to the civil authority. The next day, while sixteen carloads of soldiers were on the way to Chicago to handle the threatened

crisis there, Secretary Stanton issued general order, Number 91: "By direction of the President of the United States, the order suppressing the publication of the *Chicago Times* is hereby revoked."¹⁸

Lincoln acted in this case under most trying conditions. It was not easy to overrule an important military commander—indeed, in the case of the arrest of Vallandigham, the President had swallowed his objection to the course of General Burnside and had acquiesced in the authority of the Court Martial. Duly pondering his action in revoking the *Chicago Times* order, after many had made evident their disagreement with the course he had taken, President Lincoln, on May 25, 1864, confessed to having been embarrassed "with the question between what was due to the military service on the one hand, and the liberty of the press on the other"; as to the Burnside order, he announced himself "still from certain that the revocation was not right."¹⁹

Meanwhile the *Times* had continued "to deplore the continual cry of the Administration for more men—more human lives—more widows and orphans—more suffering and a despair," but was allowed to go its way undisturbed. General James Oakes, with emphatic conviction, summed up the role of the *Chicago Times* in his report as acting Assistant Provost Marshal General for Illinois, on August 9, 1865. The *Times* was "chief among those instigators of insurrection and treason, the foul and damnable reservoir which supplied the lesser sewers with political filth, falsehood, and treason," "a newspaper which would not have needed to change its course an atom if its place of publication had been Richmond or Charleston instead of Chicago." "The pestilential influence of that paper in this state," he continued, "has been simply incalculable. I have not the slightest doubt that it is responsible for the shedding of more drops of the patriot blood of Illinois soldiers than there are types in all of its four pages of political slime and scandal. The conspiracy that came so near wrapping Chicago in flames and drenching her streets with blood was fomented and encouraged by the teachings of the *Chicago Times*. Without that paper there would have been no conspiracy. In my opinion, without desiring in the least to abridge the regulated liberty of the press, it is as much the duty of the Government to suppress such newspapers in time of public danger and war as it is to storm the fortresses, sink the navies, and destroy the armies of the common enemy; and should war again break out I will urge the prompt adoption of the policy."²⁰ Here was nothing of the forgiving spirit of the colossal figure who had cherished "malice toward none." Was the excited general consciously pillorying for negligence the martyred President whose broken body lay in a grave a short distance away?

President Lincoln showed a remarkable sensitiveness for that day to the problems of the early conscientious objectors. Few people of that day could understand the Quaker who was

willing to attest his sincerity as an objector by refusing to purchase, or even allow his friends to purchase a legal exemption, or to furnish as substitute. An idealist like William Lloyd Garrison could proclaim the logic of the right of an objector to exemption, whether or not a member of a recognized pacifist sect. Lincoln stood upon high middle ground. Upon the appeal of a number of influential Quakers, he ordered the immediate release of Cyrus Pringle, whose devotion to the pacifistic ideal, Secretary of War Stanton was unable to break even with the assistance of the brutal efforts at coercion undertaken by sergeants who could not recognize the spirit of a saint and martyr. "For those appealing to me on conscientious grounds," Lincoln wrote in the fall of 1864 to Mrs. Eliza P. Gurney, a Quakeress and an abolitionist, "I have done and shall do the best I could and can, in my own conscience, under my oath to the law."²¹

Amid the trials of civil war Abraham Lincoln seems to have made an earnest effort to maintain the American tradition of civil liberty and martial law—to protect the nation from an undue encroachment of the military mind. There were tides that he could not always stem; then he devoted all his energies to getting them under control. One cannot but wonder whether these contributions may not have been more significant for the preservation of the Union and for the future of the Republic, than his reluctant assaults upon the institution of slavery. Indeed, the time seems at hand when Lincoln's career in the presidential office must be appraised as that, not of the "great emancipator" but of the "great conciliator."

Such homage was paid the martyred President in the lament of the Illinois journalist who within a ten-month had characterized the President as "a usurper and tyrant only fit to split rails:" "Illinois claims Abraham Lincoln as her gift to the nation; and receives back his lifeless body, marred by traitors, weeping, like Niobe, and refusing to be comforted. Many of us have been active opponents of his administration—have warred against him with the determination of earnest enemies. . . . In the past, we believed him to be pursuing the wrong path of policy, and we told the world so, using language the strength of which was prompted by the passions of the passing moment; but when the end drew nigh . . . we saw this man whom we had condemned, rise above party, and disregarding his private anger, if he had any, become the great conciliator."²²

FOOT-NOTE REFERENCES.

¹In 1840 Congress refunded certain of the fines collected from the victims of this legislation.

²Richardson, *Messages and papers of the President*, 1, 322.

³*Writings and speeches of Daniel Webster*. National edition, XV, 601-602.

⁴Nicolay and Hay, *Works of Abraham Lincoln*, II, 84.

⁵*State Register*, July 22, 1847. This sermon with another of the same date was published "by request" and offered for sale at the office of *Sangamo Journal*. It bore the title: "Two discourses on the subject of the war between the United States and Mexico; preached in the Second Presbyterian Church, in Springfield, on Sabbath, 11th July, 1847, - by Albert Hale, pastor of the church." *Sangamo Journal*, August 27, 1847.

⁶*Journal of the Illinois Constitutional Convention*, 1847, 168.

⁷Cole, *The Constitutional Debates of 1847*, *Illinois Historical Collections*, XIV, xxvii-xxviii, 387-390, 457.

⁸*Western Citizen*, July 20, 1847.

⁹*State Register*, July 22, 1847. *The Chicago Democrat*, July 20, 1847, in its Springfield correspondence for July 12, had a brief description of the debate in the Convention over Hale's sermon, but no editorial comment.

¹⁰*Sangamo Journal*, cited in *State Register*, October 1, 1847.

¹¹Editorial, "The War," in *Alton Telegraph and Review*, February 26, 1847.

¹²*Works of Abraham Lincoln*, VII, 101.

¹³*Ibid.*, 102.

¹⁴Lincoln to Erastus Corning and others, June 12, 1863. *Works of Abraham Lincoln*, VIII, 298-314.

¹⁵*Works of Abraham Lincoln*, IX, 218-223.

¹⁶*Illinois State Journal*, June 25, 1861.

¹⁷War of the Rebellion, *A compilation of the Official Records of the Union and Confederate Armies*, Series III; II, 316.

¹⁸*Works of Abraham Lincoln*, VIII, 290.

¹⁹*Ibid.*, X, 108.

²⁰War of the Rebellion, *Official Records*, Series III; V, 837-838.

²¹*Works of Abraham Lincoln*, X, 215-216.

²²*Cairo Democrat*, May 11, 1865.

